IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FOURTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NOs: 22242 of 2001& 3300 of 2002

W.P.No.22242 of 2001

Between:

Miss P.Lalitha Kumari D/o.Manikyala Rao,

Aged 24 years, D-No.16-B-14-172, Tangellamudi,

Eluru, West Godavari District.

..... PETITIONER

AND

1. The Director/Commissioner of Collegiate Education,
Saifabad, Hyderabad-500 004.

2. The Regional Joint Director, Collegiate Education,
Rajahmundry-533 001

3. The Correspondent, D.N.R.College,

Bhimavaram, W.G. District.

4. K.Ravi Teja, S/o K.Prakash Rao, 39 years,

R/o Makkavaripet, Mangalagiri, Guntur District.

5. Bhunga Padmaja D/o B.Mohan Rao, 34 years,
Flat No.44, Lavakusa Apartments, Sector-I, MVP Colony,

Visakhapatnam.

(RR4&5 are impleaded as per court order in W.P.M.P.No.30281 of 2001and 31394

of 2001, dated 20-12-2001)

..RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus, directing the respondents to issue posting orders, appointing the petitioner herein as a Lecturer in Zoology in the college of the 3rd respondent based on her selection on 28-08-2001 by the Selection Committee as intimated by the 3rd respondent in his intimation letter dt.17-08-2001, declaring, that the instructions contained in the proceedings dt.25-09-2001 issued by the 1st respondent in his Rc.No.756/Admn III-1/2001 are highly unjust, improper, contrary to law violative of the Fundamental Rights and the Principles of Natural justice.

Counsel for the Petitioner: SMT.N.(P).ANJANA DEVI, SATYANARAYANA

Counsel for the Respondent Nos.1 & 2: GP FOR HIGHER EDUCATION

Counsel for the Respondent No.3: MR.VEDULA VENKATARAMANA

Counsel for the Respondent No.4: MR. O.MANOHAR REDDY

Counsel for the Respondent No.5: MR.G. RAM GOPAL

WRIT PETITION NO : 3300 of 2002

Between:

Miss P.Lalitha Kumari D/o.Manikyala Rao,

Hindu female, Aged 24 years,
R/o D-No.16-B-14-172, Behind Sivalayam,
Tangellamudi,Eluru, West Godavari District.

..... PETITIONER

AND

1. The Director/Commissioner of Collegiate Education,
Saifabad, Hyderabad-500 004.

2. The Regional Joint Director, Collegiate Education,
Rajahmundry-533 001

3. The Correspondent, D.N.R.College,

Bhimavaram, W.G. District.

4. Mrs.Bunga Padmaja, D/o Sri B.Mohanrao,

aged 34 years, R/o Flat No.44,

Lavakusa Apartments, Sector-I, M.V.P.Colony,

Visakhapatnam-17

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any writ, order or direction more particularly one in the nature of writ of Mandamus declaring impugned proceedings in Rc.No.1456/Admn-III-1/2001 dated 10-01-2002 directing the Third Respondent to issue appointment order to the fourth respondent without giving opportunity of any further selection by the third respondent provisionally as directed by this Hon'ble Court in its order dated 20-12-2001 in W.P.No.22242 of 2001 as illegal, arbitrary, capricious, suffers from inherent lack of jurisdiction and violating of principles of natural justice and consequently to set aside the same and secondly, to declare the proceedings of the first respondent in Rc.No.756/Admn-III-1/2001 dated 25-09-2001 as illegal, arbitrary, capricious and suffers from inherent lack of jurisdiction and consequently to set aside the same including the appointment of the fourth respondent; and thirdly, to direct the third respondent to regularize the services of the petitioner as Lecturer in Zoology as a consequential order.

Counsel for the Petitioner: SMT.N.(P).ANJANA DEVI, SATYANARAYANA

Counsel for the Respondent Nos.1 to 2: GP FOR HIGHER EDUCATION

Counsel for the Respondent No.3: MR V.VENKATARAMANA

Counsel for the Respondent No.4: MR. G.RAM GOPAL

The Court made the following:

The Hon'ble Sri Justice

K.C. Bhanu

W.P. Nos. 22242 of 2001 and 3300 of 2002

-

-

COMMON ORDER:

-

W.P. 22242 of 2001 is filed seeking to direct the respondents to appoint the petitioner as Lecturer in Zoology in the college of 3rd respondent based on her selection on 28.8.2001 by the selection committee and W.P. 3300 of 2002 is filed to declare the impugned proceedings in Rc.No.1456/Admn-III-1/2001 dated

10.1.2002 directing the 3rd respondent to issue appointment order to the 4th respondent without giving opportunity of any further selection by the 3rd respondent provisionally as illegal and arbitrary. Since the petitioner in both these writ petitions is the same and the issue involved in both the writ petitions is similar, they are disposed of by this common order.

The brief facts that are necessary for the disposal of these cases are as follows:

The petitioner belongs to Schedule Caste and she was appointed as Lecturer by the 3rd respondent on consolidated pay on 9.8.2001. The Government gave permission to the correspondents of the aided colleges to fill up the backlog permanent vacancies of SCs and STs. The 3rd respondent notified backlog vacancies of the posts of Lecturers in Zoology and the petitioner has applied for the same. She attended the interview on 28.8.2001 and also attended before the selection committee. The 3rd respondent sent her intimation letter dated 1.9.2001 that she was selected and she has to submit some papers before him. She was told that the appointment order will be issued on the 1st respondent approving the minutes of the selection committee. But, the 3rd respondent college got a copy of the proceedings dated 25.9.2001 issued by the 1st respondent asking the aided colleges to review even the selections already made. It is stated that the 1st respondent being not the Government, is not competent to add something to the G.Os which is not found in the G.Os. and he has no right to direct the colleges or the authorities to ask for review of the selections already made. Hence the present writ petitions.

A counter affidavit has been filed by the 3rd respondent in W.P.3300 of 2002 admitting that the petitioner has applied for the post of Lecturers pursuant to the Advertisement on 8.6.2001 and that the petitioner has received call letter from the 3rd respondent and

attended interview on 28.8.2001. It is further stated that the selection committee had selected the petitioner on the presumption that the Director of Collegiate Education vide proceedings dated 25.9.2001 prescribing the conditions of eligibility and qualifications are only applied to in-service candidates, on that presumption the petitioner was wrongly selected by the selection committee. The 4th respondent is well qualified and therefore the 4th respondent was given appointment order pursuant to the orders of Director of Collegiate Education Rc.No.1456/Admn.III-1/2001 dated 10.1.2002. G.O.Ms.No.214 and 215 dated 8.5.2001 and the proceedings of the Director of Collegiate Education dated 25.9.2001 are the guidelines for the selection of lecturers. In the said proceedings it was stated that the candidate belonging to SC/ST who passed M.Phil examination and submitted Ph.D thesis by 31.12.1993 shall be treated on par with the candidates who passed NET/SLET. Hence the Regional Joint Director of Collegiate Education, Rajahmundry has asked the 3rd respondent to revise the selection by canceling the selection of the petitioner and to select the 4th respondent in that place and accordingly the 4th respondent was selected and the same was approved by the Director of Collegiate Education vide proceedings dated 10.1.2002.

The 4th respondent filed counter affidavit stating that though he was fully qualified, he was not considered for the post of Lecturer in Zoology and hence he submitted representation dated 13.8.2001 to the Commissioner of Collegiate Education, Hyderabad and also filed W.P. 18707 of 2001 questioning the arbitrary action. Since the 1st respondent found the illegality in the process of selection by the 3rd respondent, he has rightly issued the proceedings dated 25.9.2001. As the candidates who passed their M.Phil Degree by 31.12.1993 are entitled to compete with the candidates who passed NET/SLET examination and as they were eliminated in the category of candidates who passed NET/SLET examination, no illegality can be attributed to the proceedings dated

25.9.2001.

Learned counsel for the petitioner in both the writ petitions contended that after following the due procedure in G.O.Ms.No.214 the petitioner was appointed as a Lecturer in Zoology; that possessing of M.Phil degree by the 4th respondent is neither a requirement for selection nor an additional qualification for selection as per rules and therefore in the first instance the selection committee rightly ignored the M.Phil degree of the 4th respondent in the process of selection; that thereafter at the instance of 4th respondent the 1st respondent issued clarification vide proceedings dated 25.9.2001 for which the 1st respondent has no jurisdiction and for which the Government has to give clarification and therefore the clarification given by the 1st respondent dated 25.9.2001 is illegal. Hence, he prays to set aside the same.

On the other hand, learned Government Pleader for Higher Education contended that the clarification given by the 1st respondent is based upon the G.O. issued by the Government and the 1st respondent is competent to give such a clarification and as per G.O.1599 dated 7.11.1997, the candidates who passed M.Phil degree are exempted from passing NET for getting UGC pay-scales and therefore the order under challenge does not suffer from any legal infirmities so as to call for interference by this Court. Hence she prays to dismiss the writ petitions.

Learned counsel for the respondent No.4 contended that as per the U.G.C. Regulations, which have statutory force, passing of NET for appointment as a Lecturer is compulsory and admittedly the 4th respondent passed M.Phil examination prior to December, 1993 and therefore she is exempted from appearing the NET and as per the notification passing of NET of SLET is compulsory and therefore the 1st respondent rightly issued

clarification orders which are based upon the earlier G.Os. but not on any new policy and hence he prays to dismiss the writ petition.

The admitted facts are that the petitioner possesses M.Sc. degree in Zoology. It is also not disputed that respondent No.4 passed M.Phil examination prior to 31.12.1993. The 3rd respondent-College notified certain posts for limited recruitment for clearing backlog vacancies for SC & ST candidates. In these two writ petitions, we are concerned with the post of Lecturer in Zoology, which is reserved for SC-C women. The notification issued by the 3rd respondent dated 4.6.2001 is not under challenge. As per this notification, the qualification for the posts of Lecturers are, (1) First or Second class Masters Degree in the relevant subject with a minimum of 50%, (2) a pass in National Eligibility Test (NET or SLET). Asfar as scale of pay is concerned, U.G.C. scale of pay will be given to those who passed NET or SLET and others will be paid the State scale of pay. This notification would clearly to go show that the minimum qualification of the candidate is First or Second class in the Masters Degree in the relevant subject with a minimum of 50% marks. Though it is stated as one of the qualifications that a pass in NET or SLET is compulsory, it is made clear that if a person passed NET or SLET, he will be given UGC pay-scales and others will be given State pay-scales. So, if a person is possessing a Masters Degree in a relevant subject with a minimum of 50%, he is eligible for applying the posts in backlog vacancies.

The Government of Andhra Pradesh made an ad hoc rule as per G.O.Ms.No.214 dated 8.5.2001, which reads as follows:

> "Notwithstanding anything contained in the Andhra Pradesh State and Subordinate Service Rules, 1996 and Special Rules or Ad-hoc Rules and any other rules governing the method of recruitment procedure adopted by various recruiting agencies for various categories of posts by direct recruitment, the method of selection by written examination and Interview (oral tests)

> for appointment by direct recruitment for filling up of backlog vacancies for Scheduled Castes and Scheduled Tribes in all categories of posts, be relaxed and that the selection for such limited recruitment of Scheduled Castes and Scheduled Tribes be made on the basis of marks obtained in the qualifying academic examinations by waiving written examination and interviews (oral tests) to fill up the backlog vacancies and the vacancies shall be filled within two months".

The above provision makes it very clear that in respect of selection to the limited recruitment of SCs & STs, the marks obtained in the qualifying examination is the criterion. There is no need to conduct any written examination or interview for filling up of backlog vacancies. It is made clear that the above rule also applies to all the recruitment agencies. Perhaps that is the reason why the selection committee called the petitioner for interview on 28.8.2001 at 10 a.m. Basing on the interview and the verification of the records, the 3rd respondent-college issued the proceedings dated 1.8.2001 informing the petitioner that she was selected for the post of Lecturer in Zoology in D.N.R. College, Bhimavaram as per the minutes of the selection committee. Of course the said selection was subject to the approval of the Commissioner of Collegiate Education. But thereafter it seems that on the representation made by the 4th respondent the 1st respondent issued a clarificatory letter dated 25.9.2001 stating that the candidates who possess 55% of marks in their Masters Degree, relaxable by 5% in the case of SC/ST candidates, and passed M.Phil examination or submitted Ph.D thesis by 31.12.1993, shall be treated on par with the candidates who passed NET/SLET. Therefore, all the Regional Joint Directors and the Correspondents of all the aided colleges are requested to follow the above instructions scrupulously while attending the selections for the post of lecturers under limited recruitment. By virtue of these clarification orders, it is the contention of the learned counsel for the petitioner, that the

appointment of the petitioner was not approved.

It is pertinent to refer to G.O.Ms.No. 1599 dated 7.11.1997 wherein the Government after careful examination directed that the lecturers who are appointed by Direct Recruitment or by promotion from the category of in-service Junior Lecturers who possess 55% of marks in their Master Degree and submitted Ph.D. thesis or passed in M.Phil examination by 31.12.1993 be exempted from passing the N.E.T. for getting eligibility of revised University Grants Commission Pay of 1986. This circular is a very general circular issued by the Government in exercise of executive functions. It not only applies to the general candidates but also applies to the reserve Category. There is no indication that these instructions would apply to the limited recruitment of filling up of backlog vacancies. By clarification, the Director of Collegiate Education made the G.O. applicable to any recruitment of backlog vacancies. Therefore, the proceedings issued by the 1st respondent dated 25.9.2001 cannot be said to be a clarification but the 1st respondent made the G.O. applicable to the filling up of backlog vacancies. He cannot issue such a clarification which is contrary to the G.O. issued by the Government in G.O.Ms.No.1599 dated 7.11.1997. G.O.Ms.No.1599 is silent with regard to filling up of backlog vacancies and it is not known how the 1st respondent issued the proceedings dated 25.9.2001. If the Government wants to give executive instructions, it can do so but not by way of clarification by the 1st respondent. Therefore, the impugned proceedings dated 25.9.2001 issued by the 1st respondent lacks inherent jurisdiction and is therefore liable to be quashed.

The procedure in filling up of backlog vacancies is as per the ad hoc rule made in G.O.Ms.No.214 dated 8.3.2001, which says that the limited recruitment of SCs and STs should be on the basis of marks obtained in the qualifying academic examination. So, the only criterion to be followed by the selection committee is to see the marks obtained by the candidates in the qualifying examination.

Admittedly the petitioner secured 66.56% marks in M.Sc. Zoology whereas the 4th respondent secured only 60%. If that is taken into consideration in applying the ad hoc rule, the petitioner has to be appointed as Lecturer in Zoology and as a matter of fact the selection committee rightly selected the petitioner and accordingly the 3rd respondent-college issued proceedings dated 1.9.2001 selecting the petitioner as Lecturer in Zoology. The procedure adopted by the selection committee in selecting the candidate and the appointment order issued by the 3rd respondent-college, though subject to approval of the competent authority, cannot be said to be in contravention of any provisions governing the recruitment procedure. Even as per the notification of the 3rd respondent dated 4.6.2001, a pass in National Eligibility Test or State Level Eligibility Test is not a minimum qualification or an additional qualification. It is only incorporated in the notification for the purpose of giving U.G.C. pay-scales or the State pay-scales to the candidate selected. Therefore, though the 4th respondent who admittedly passed M.Phil examination prior to 1993 was exempted as per G.O.Ms.No. 1599 from passing the NET, it is only for the purpose of giving U.G.C. scales. Even though a person has not passed NET or SLET but submitted Ph.D thesis or passed M.Phil examination before 31.12.1993, then such person is eligible for the revised U.G.C. pay-scales only. Therefore, it is clear that possessing of M.Phil degree is not a minimum requirement for appointment of a Lecturer in Zoology but it is a minimum requirement for getting UGC pay-scales.

As per the orders passed by the 1st respondent in proceedings dated 10.1.2002, the 3rd respondent was requested to issue appointment order to the 4th respondent. This proceedings has been issued basing on the letter of the Regional Joint Director dated 15.10.2001. The selection of the writ petitioner through duly constituted selection committee is not cancelled or varied. Therefore, how the 1st respondent issued the impugned proceedings by appointing 4th respondent is not known. The 1st respondent has not

applied its mind independently in appointing R-4. Unless the 1st respondent as a competent authority for approval of selection set aside or disagreed with the minutes of the selection committee which has selected the petitioner in pursuance of its meeting held on 28.8.2001, some other candidate in the same selection process cannot be appointed. Therefore, the 1st respondent acted arbitrarily and the action of the 1st respondent is not transparent, fair and reasonable. Therefore, the proceedings dated 10.1.2002 directing the 1st respondent to appoint the 4th respondent is illegal and arbitrary. Since the petitioner is qualified and as a matter of fact she was selected by the duly constituted selection committee and her selection was not in contrary to the provisions of the Act and on the other hand her selection is duly in consonance with the ad hoc rules, she has to be appointed as Lecturer.

Therefore, both the writ petitions are allowed quashing the impugned proceedings dated 10.1.2002 and the clarification proceedings issued by the 1st respondent dated 25.9.2001 and directing the 1st respondent to approve the selection of the petitioner in accordance with law.

K.C. Bhanu, J.

Date: 24 --06—2005.

MVB.

Rule is made absolute as above.

Witness the Hon'ble Sri Bilal Nazki,

The Acting Chief Justice on this Friday the Twenty fourth day

Of June, Two thousand and five.

To

1. The Director/Commissioner of Collegiate Education,
Saifabad, Hyderabad-500 004.

2. The Regional Joint Director, Collegiate Education,
Rajahmundry-533 001

3. 2 CCs to G.P. for Higher Education, High Court of A.P. , Hyderabad. (OUT)

4. 2 C.D. copies.